Supreme Court, U.S.
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No. 05-

IN THE

Supreme Court of the United States

JORGE FAJARDO-HERNANDEZ,

Petitioner,

v.

ALBERTO R. GONZALES,
Attorney General,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

PETER C. MEIER
PAUL, HASTINGS, JANOFSKY
& WALKER LLP
55 Second Street
Twenty-Fourth Floor
San Francisco, CA 94105
(415) 856-7000

Attorneys for Petitioner

197591

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED FOR REVIEW

Whether a non-citizen of the United States, who was not born in a territory of the United States, may become a national of the United States by demonstrating permanent allegiance to the United States.

PARTIES TO THE PROCEEDING

The caption of this Petition contains the only named parties to the instant proceeding.

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OPINIONS AND ORDERS ENTERED IN THE CASE

The Opinion of the Court of Appeals (App., *infra*, 1a-2a) is unpublished. The Order of the Board of Immigration Appeals ("BIA") (App., *infra*, 3a) and the immigration judge's decision (App., *infra*, 3a-19a) are also unreported.

BASIS FOR JURISDICTION

The decision of the Court of Appeals denying rehearing was entered on August 9, 2005. (App., *infra*, 20a.) The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

1. Section 101(a)(3) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101(a)(3), *et seq.* states:

> The term "alien" means any person not a citizen or national of the United States.

2. Section 101(a)(22) of the INA, 8 U.S.C. § 1101(a)(22) states:

> The term "national of the United States" means
>
> (A) a citizen of the United States, or
>
> (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

3. Section 237(a)(2)(A)(ii) of the INA, 8 U.S.C. § 1227(a)(2)(A)(ii), states in pertinent part as follows:

> Any alien who at any time after admission is convicted of two or more crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial, is deportable.

4. Section 237(a)(2)(A)(iii) of the INA, 8 U.S.C. § 1227(a)(2)(A)(iii), states in pertinent part as follows:

> Any alien who is convicted of an aggravated felony at any time after admission is deportable.

STATEMENT OF THE CASE

Jorge Fajardo-Hernandez (Petitioner) has lived in the United States for his entire adult life. Administrative Record ("AR") 46. He came to the United States in 1965, when he was nine years old, being brought here from Colombia by his mother. AR 46-47. Upon graduating from high school in Alhambra, California, in June 1975, Petitioner immediately began service in the United States Army, 25th Infantry Division. AR413, 430. When he joined the Army, Petitioner took an oath to support and defend the United States, as administrated to all servicemen and servicewomen pursuant to 10 U.S.C. § 502.

While in the Army, Petitioner's commendations included a Rifle Expert Badge. AR391. After three years of Army service, Petitioner was honorably discharged in June 1978. AR430. After his honorable discharge from the Army,